UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
		Docket #18cv11642
BALIGA, WAYNE,	:	
Plaintiff,	:	
- against -	:	
LINK MOTION INC., et al.,	:	New York, New York
		July 28, 2021
Defendants.	:	
----------	:	

PROCEEDINGS BEFORE
THE HONORABLE DEBRA C. FREEMAN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:
GREENBERG TRAURIG, LLP
BY: TOBY S. SOLI, ESQ.
200 Park Avenue
New York, New York 10166

GREENBERG TRAURIG, LLP
BY: MIRIAM G. BAHCALL, ESQ.
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601

For Defendant Shi and Link Motion:
FELICELLO LAW P.C.
BY: MICHAEL JAMES MALONEY, ESQ.
366 Madison Avenue, 3rd Floor
New York, New York 10017

Transcription Service:
Carole Ludwig, *Transcription Services*
155 East Fourth Street #3C
New York, New York 10009
Phone: (212) 420-0771
Email: Transcription420@aol.com

Proceedings conducted telephonically and recorded by electronic sound recording;
Transcript produced by transcription service

APPEARANCES CONTINUED:

For the Receiver: SEIDEN LAW GROUP LLP
BY: AMIAD KUSHNER, ESQ.
STEVEN SEIDEN, ESQ,
322 Eighth Avenue, Suite 1704
New York, New York 10001

INDEX

E X A M I N A T I O N S

Witness	Direct	Cross	Re-Direct	Re-Cross
None				

E X H I B I T S

Exhibit Number	Description	ID	In	Voir Dire
None				

THE COURT: All right, this is Judge Freeman. This is Baliga versus Link Motion case, 18cv11642. Could I have your appearances please starting with counsel for Mr. Baliga.

MS. TOBY SOLI: Toby Soli from Greenberg Traurig for the plaintiff, and I also have on the line with me my colleague Mimi Bahcall. We just filed her pro hac papers yesterday.

THE COURT: All right, I'll admit you pro hac for purposes of this proceeding anyway. And who do I have for Mr. Shi? Anyone? All right -

MR. MICHAEL MALONEY: Good morning, Your Honor, good morning, Your Honor, this is Michael Maloney on behalf of Mr. Shi.

THE COURT: Okay, don't forget to unmute yourself when you speak. Who do I have for the company?

MR. MALONEY: Your Honor, I believe that during one of the prior conferences we had all agreed that I would represent the company with respect --

THE COURT: You're representing --

MR. MALONEY: With respect to the motion to dismiss, Your Honor, but technically speaking, it's my understanding that because the receivership is still in place, the receiver is representing the company with

respect to other matters.

THE COURT: Do I have counsel for the receiver on?

MR. AMIAD KUSHNER: Yes, good morning, Your Honor, this is Amiad Kushner from Seiden Law Group representing the receiver. And my colleague Steve Seiden is on the line as well.

THE COURT: The receiver himself?

MR. STEVEN SEIDEN: No, no, not to be confused with Robert, the receiver, this is Steven.

THE COURT: Okay, do we have the receiver on as well or no?

MR. SEIDEN: No.

THE COURT: No, okay. All right, I wanted to – hold on one second. I'm getting distracted by somebody who's looking for me for something. Can you just hang on one moment please?

(pause in proceeding)

THE COURT: Sorry.

(pause in proceeding)

THE COURT: Okay. I had wanted to have this conference to talk about this motion that I have to toll the statute of limitations. I'm confused by the motion, and I wanted to just hear a little bit further from the

parties. I'm confused about the issue of Mr. Shi's standing to bring that motion as Mr. Shi doesn't currently have the ability to speak for the company and it would be the company's claim against its prior counsel on which the statute of limitations is being sought to be tolled. And I understand that Mr. Shi is taking the position that it's unlikely that the receiver, who would have the ability to act for the company in this regard, would be unlikely to seek the tolling of the statute of limitations or to bring the claim as the claim might suggest that the receivership was invalidly instituted. But, nonetheless, I'm not sure I understand how Mr. Shi can be seeking this relief.

I originally asked, well, what statute of limitations are we talking about and when would it expire just so that I would understand how urgent the matter was. But that really wasn't going to the merits of the issue. And I also don't understand why it is necessarily a given that the receiver would not have any interest in making this application because the receiver presumably has a fiduciary duty to the company. If there is a potentially viable claim that the company may have against its prior counsel for not having raised a defense to the case or not having informed the company about a standing issue and the receiver choses not to pursue that relief, then it seems

that if the receiver ends up discharged and if that is a viable claim that has been lost because the receiver failed to act, then the receiver might find himself on, you know, in some trouble with the company going after him for breaching fiduciary duties and not pursuing something that was a viable and perhaps valuable claim. Unclear whether it would be either of those things, but potentially.

So I wanted to understand the position of the receiver on this. I wanted to understand, first, how Mr. Baliga would have standing - not Mr. Baliga, I'm sorry - Mr. Shi would have standing, and, second, I wanted to understand why it was a given that the receiver would be unwilling to pursue the matter even with respect to a potential tolling of statute of limitations until such time as the receivership issue was sorted out, as there's currently a pending motion to discharge the receiver which is not going to be decided that fast, I would suspect, given that I would probably need to write a recommendation on it and it would have to go to Judge Marrero and it might be challenged, whatever decision there is, and so on.

So if you add up all of the pieces of time that might be required for a report and recommendation, a

decision, and potentially objections to a report and recommendation, motion for reconsideration, who knows what, it's possible this claim could be lost if the receiver doesn't seek to preserve it.

Well, anyway, those are my questions. Let me start with Mr. Maloney, how does Mr. Shi have standing?

MR. MALONEY: Thank you, Your Honor. I guess the best way to start would be to reference, again, the internal affairs doctrine which I'm sure you recall basically stands for the proposition that the internal affairs of the company should be governed by the laws of its state of incorporation which is the Cayman Islands. Under the Cayman Islands law only shareholders can appoint or remove a director, and the actions of the receiver to purportedly remove Shi as a director are null and void. And, in fact, at docket 18216 --

THE COURT: Well, wait a minute, there's been no judicial finding to that effect. So you can say it's null and void, but there's been no court that has said that it's null and void. And at the moment we have a situation where there is a receiver in place who has not been discharged, and he's acting under the terms of a court order appointing him. That order may end up vacated. It may not end up vacated. There are arguments

being made on both sides of that. But just to say it is null and void I can't accept that as a given without making a determination and perhaps having Judge Marrero make a determination as to whether it is null and void.

So Mr. Shi has been removed. He may have been removed without authority and that may yet to be determined, but he has been removed. He is no longer chairman and CEO of this company.

MR. MALONEY: I recognize the point that you're making, Your Honor, however, the document I was referencing is an order from the Grand Court of the Cayman Islands dated 4th of February 2020 in which that court refused to recognize the authority of the receiver to remove or appoint a director. And so I recognize the point you're making, but there is an open question as to whether a court has moved on that issue or not. And I'm saying that recognizing that there are further proceedings that need to, further proceedings and determinations that this Court needs to make on that issue.

THE COURT: Well, first of all, there's also – I also had asked previously for some explanation from the receiver as to how he understood that order, and there was some difference of opinion there. And the receivership order that was issued by Judge Marrero specifically said

the receiver had the authority to remove directors, and he acted pursuant to that order. So there may be some conflict of law issues that have to be worked out. This may be another confusing issue that has to be sorted out. But right now the situation is that I don't think you can take the position that Mr. Shi either is in charge of this company or even that he could act without a vote of the board of directors in order to on his own seek relief on behalf of the company.

So I think it's very hard for you to say either of those things, that he is currently CEO or chairman of the board or that there's been board action, and he's acting pursuant to that, or together, I don't think you can say them together. Right now there's a receiver.

MR. MALONEY: Your Honor, if I could respond to that. I don't believe that I'm arguing that he's acting on the vote of the board of directors. What I'm arguing here is that there's an open question as to whether his purported removal was effective as a matter of law. He has an interest in the outcome of the company and this case. And this Court has the authority and power to modify the receivership order to permit him to pursue the malpractice claim on behalf of the company. This Court has the power and authority to appoint any person it deems

appropriate to pursue those sort of claims. It just so happens that right now the receiver is in that role with respect to all interests and claims that may, the company may have.

But as I will hopefully explain later, in our view the receiver is so conflicted that we don't see it possible that he would bring the claim that we believe the company has.

THE COURT: I'm not asking about bringing the claim. I'm asking about seeking to have the statute of limitations tolled so that a claim could be brought later if and when the receivership order is vacated. I mean a receivership order may be vacated at the end of the case. It may be vacated in a few weeks. It may not be vacated, you know, I don't know what's going to happen there. But if and when the receivership order is vacated and the company without the receiver wants to make a claim against DLA Piper to say that, you know, we should never have had all this happen in the first place and it's all your fault, the claim could then be made if the statute of limitations were tolled.

So assuming the Court should on its own without DLA having notice of it and opportunity to be heard on it, assuming all of that, the main motion that was made here,

the first relief sought is to toll the statute of limitations. Only secondarily did you say, oh, also, Judge, you know what, you should just modify the receivership order, have the receiver the only one who can bring litigation on behalf of the company, except for this claim where you should appoint Mr. Shi and let him bring a claim, the whole point of which would be to undermine the receivership or it would be part and parcel of it because the argument would be that it was malpractice to allow the case to have been brought.

It seems unlikely in the current posture that it would make sense to keep the receivership order and modify it to allow Mr. Shi to bring this particular claim. But the tolling of the statute of limitations is more modest relief. Why would the receiver, and I want to hear from counsel for the receiver on this, why would the receiver necessarily not seek that relief if it would not mean bringing a suit at this point; it would only mean preserving a potential claim for the company down the road if and when he is discharged? Let me hear from Mr. Kushner or Mr. Seiden on that.

MR. KUSHNER: Sure. Your Honor, this is Mr. Kushner. I think Your Honor is correct that the malpractice claim against DLA belongs to the company not

any other party, and since the receiver at the moment has, you know, controls the company's claims, then it's for the receiver to determine whether or not to pursue this proposed malpractice claim.

I think Your Honor's also correct that just because there is a potential claim doesn't mean that it makes sense to bring the claim or that the claim has any merit. I think in this case the need for a receiver is manifest from the record. The company was being looted by Mr. Shi, and something needed to be done. It's true that later this issue of Cayman Islands law presented itself, and now here we are, we're dealing with this kind of difficulty in that, and they have been, this issue was missed apparently at the time. But, nevertheless, it's more of an issue of form over substance. The need for the appointment of a receiver was clear.

And to the extent that the company was damaged, the damage was done by Mr. Shi. It was Mr. Shi who looted the company.

THE COURT: I'm not asking whether the claim should be brought. I'm asking whether the receive should be taking steps to seek the tolling of the statute of limitations to preserve the claim for a potential later determination as to whether the claim should be brought,

particularly if and when the receiver is discharged. I've got to tell you I think there is a strong argument for discharge of the receiver. I think I suggested as much in the last opinion that I wrote because the receiver was appointed based on certain allegations, based on certain claims that were made based specifically on those claims that were made with Mr. Baliga telling the Court it didn't even have to look at any other claims.

Mr. Baliga then voluntarily withdrew those claims. They were not dismissed. They were not dismissed for lack of standing. What I said in another opinion was simply, look, you said you have derivative claims and direct claims in the same pleading, by the way, unclear whether he could do that but he said he did. Right? Just please clarify which ones are direct and which one are derivative because I'm having trouble reading this pleading and understanding it. He then chose to drop all of his derivative claims. So he chose without a court ruling that there was no standing, he chose to pull them all back, okay, and say I'll bring them another time after I convert my shares.

Query whether he could have standing then because at least under U.S. law you're supposed to have standing at the time the suit is brought. Query whether

he could even bring the suit as a derivative suit based on an official ownership of shares in a foreign corporation, not shares that are traded on the New York Exchange the way his ADRs are traded. Lots of queries.

But in any event, he had now chosen to withdraw those claims and was proceeding on securities fraud claims. That's what the current case is.

So I think there is a very decent argument that the basis for the appointment of the receiver is no more, that the basis, it existed at the beginning of the case, has disappeared because it was based on claims that have been withdrawn, and there's a decent argument the receivership should be vacated.

Now, I understand Mr. Baliga is saying no, no, no, because under the exchange act there should be a receiver so you should just like, you know, just through shifting of your thought process, you should say the receiver should be in place under that. I don't know. I have to look at that.

But there is an argument that is certainly colorable or more than colorable that the receiver should be discharged. If and when the receiver is discharged, if it takes so long to do that that the claim against the former counsel for the company becomes time-barred, that,

if it is a viable claim, somebody argues it's a valuable claim, again, maybe it's viable, maybe it isn't. Maybe it's valuable, maybe it isn't. But if it's gone because of the statute of limitations, the receiver bears the risk that the receiver let a potentially viable claim go because the receiver didn't take any steps to preserve the claim. Whether or not he currently thinks that it should be brought, whether he thinks it's in the interest of the company to bring it, he's taken no steps to preserve it. And is it a potentially viable malpractice claim? Unclear to me. Unclear.

I do think there are questions about standing at the beginning of this case that were not raised that Mr. Shi is making arguments as to how the company was harmed. Mr. Baliga and the receiver clearly seem to think that the company is being saved and not harmed. But there are arguments here being made.

So the question that I have is why is it so evident, as Mr. Shi seems to suggest, that the receiver would not have any interest in seeking to toll the statute of limitations?

MR. MALONEY: Your Honor, this is Michael – I'm sorry. This is Mr. Maloney --

THE COURT: Go ahead, Mr. Maloney.

MR. MALONEY: Okay, thank you. From our point of view, the facts speak for themselves on this particular narrow question. Former counsel had been retained by the company with respect to the issuance of shares, registered shares in the Cayman Islands to an investor. Shortly after that engagement, the plaintiff brought this case and sought the appointment of the receiver.

So if you consider that set of facts, former counsel necessarily had knowledge of the identity of the registered shareholders of the company on the register in the Cayman Islands at the time the case was brought. Former counsel then appeared in the case on behalf of the company and as, you know, a large international law firm should've exercised reasonable due care in --

THE COURT: Okay, let met cut off because I'm not really asking whether it's a good malpractice claim or not a good malpractice claim. I'm saying maybe it is and maybe it isn't. Okay? But if maybe it is, why does Mr. Shi take the position that the receiver absolutely no way, no how would ever have any interest in seeking to toll the statute of limitations on it? The receiver has a fiduciary duty to the company. Why wouldn't the receiver, knowing that there's at least an argument that's being made that it's a decent malpractice claim, why wouldn't

the receiver be interested in seeking to toll the statute of limitations on a potential claim of the company even if he doesn't think it's a claim that should be brought at this time? If he thinks it should be brought at this time, there's no reason to toll the statute. Right? It's only if he thinks it should not be brought at this time that it might make sense to toll the statute of limitations to preserve it for later, future consideration.

Why is Mr. Shi taking the position that it would be futile to ask the receiver to make a motion to toll the statute? The receiver, it seems to me, should have an interest in doing that if there is a potentially viable claim. If the receiver has analyzed and said I think it's not potentially viable, I think it's all nonsense and, you know, there's no way I'm going to have anything whatsoever to do with that, the receiver's taking his chances that if the receivership order is dissolved and if a board of directors votes that it should pursue a claim against former counsel and if it then cannot, because the claim is time-barred, and if the receiver had fair notice of this and did nothing to seek tolling, the receiver can be sued himself for having breached his duties to the company and maybe that claim goes somewhere and maybe that claims goes

nowhere.

But why is it a given that Mr. Shi, who I don't think has standing to do this, says that I have to do it because there's no way that the receiver would seek this relief, why is that true?

MR. MALONEY: Okay, I guess to shorten this up, in our view there are actually two malpractice claims here, one that belongs to the company as we described in our papers. We believe there's another one that belongs to Mr. Baliga against his former counsel which is the firm owned by the receiver.

THE COURT: Oh, Mr. Shi doesn't have any interest in protecting a claim that Mr. Baliga has.

MR. MALONEY: We agree, however, the fact that that claim may be out there, in our view, it directly conflicts the receiver from pursuing a claim against DLA because by definition making the allegations that needed to be made against DLA would assist Baliga, would essentially admit malpractice vis-à-vis Baliga.

THE COURT: I'm sorry, I have completely lost you. Try that again.

MR. MALONEY: In order for the receiver to bring the claim against former counsel for the company, in our view, in order to do that, the receiver would need to

make allegations that would constitute admissions of malpractice vis-à-vis the receiver's law firm and its relationship with Baliga.

THE COURT: Okay, but, again, I'm not asking, I'm not asking why the receiver would not be interested at this time in bringing a malpractice claim. I'm asking why the receiver would have no interest in protecting himself from a claim that he failed to act to try to get the Court to toll statute of limitations.

MR. MALONEY: On that question I completely agree with that question. I don't know why we couldn't stipulate to toll the statute of limitations for the claim against former counsel for the company. It seems to me that would be the most logical and practical solution.

THE COURT: No, I'm not asking why you couldn't stipulate to something. I'm asking why it's a given that the receiver would never want to take that step. I'm not even sure if you asked the receiver to take that step. The receiver said no way, I'm not doing that. Or if you just assumed that the receiver would not take that step. And I would like to hear from counsel for the receiver on the narrow question of why the receiver would have no interest in not in bringing the claim but in asking the Court to toll the statute of limitations, assuming that's

something the Court can do and assuming that we wouldn't have to bring in DLA Piper to get their take on anything, etc., etc. Just on that basic question of why only Mr. Shi can bring the motion for tolling of the statute, why the receiver would have no interest in bringing that motion.

MR. KUSHNER: This is Mr. Kushner again. Your Honor, there are numerous potential claims that are out there, but the receiver is not asking the Court to toll the statute of limitations on claims that the receiver believes have no merit. But now that Your Honor has focused on this specific claim against, potential claim against DLA for malpractice, the receiver would not oppose a tolling of the statute of limitations with respect to that claim, given, you know, the discussion that we've had this morning on this call.

I mean to the extent that the Court has any concern about, you know, a discharge of a receiver and hypothetically the company took control again after a potential vacating of the receivership order, if there was a claim to be brought, you know, the receiver wouldn't want to be responsible for the running of the statute of limitations. Again, completely independent of the receiver's current view of the merits of the claim.

So we would not oppose --

THE COURT: Okay, so there's a difference between not opposing a motion where I don't think the parties that brought the motion has standing to have brought it and asking for the relief affirmatively on the receiver's behalf. You have a client, the receiver is your client. I think you need to talk to your client about what your client wants to do here. But I would ask that you do speak to your client and see what your client wants to do here under these circumstances because I think the receiver is at the moment properly the one to ask for the relief in the motion.

Now, there are two pieces of relief sought in the motion, although the motion is framed and put on the docket as a motion for a declaration tolling the statute of limitations. At the end of the brief at least and somewhere else in there too I believe, it says, oh, and you should also, Court, modify the receivership order to allow Mr. Shi to bring that claim. I'm not talking about that part. I'm only talking about the part asking for tolling of the statute of limitations on a legal malpractice claim by the company against its former counsel.

If the receiver is interested in bringing that

application affirmatively, I'd like to have something on the docket reflecting that. Because my inclination is to say that Mr. Shi lacks standing to ask for that relief, but I'm not sure that the receiver, but I think the receiver would not lack standing and I'm not sure that the receiver would not want to do the same. And I think that we should find out because it's been raised, and rather than just toss it on standing grounds and we have this very convoluted situation right now and a lot of issues in question with pending motions, I think we should find out from the receiver what he wants to do under these circumstances, and he should say so. Okay? Does that all make sense?

MR. KUSHNER: That makes sense.

THE COURT: Okay. So that was the purpose of the call, to see if that would make sense and if we could get some further clarity on that. And then once I get some further clarity on that, I will try to address that, not to mention the motion to discharge the receiver. All right?

All right, that's all I got for the moment. Anybody have anything for me while I've got you all?

MR. MALONEY: Mr. Maloney, nothing further, Your Honor.

THE COURT: Okay, Ms. Soli.

MS. SOLI: Nothing from --

MR. SEIDEN: I have one - I'm sorry, just one question. This is Steve Seiden. Are you saying the receivership is in place, the receiver still has the authority to act accordingly in the best interests of the company, correct?

THE COURT: Correct. As of this moment in time, the receivership order is in place and the receiver is still in place. I'm not sure it will last, and if the receivership order ends up vacated, there's another big question out there, and if anyone wants to put in any supplemental briefing on this question, feel free, which is if it were to be vacated, should it be vacated ab initio or should it be vacated as of the present time? And that to me is a very big difference because if you vacate it from the outset, you turn back the clock and you try to undo things a receiver has done and Mr. Shi gets reinstated and I don't know what happens to the assets that have been clawed back and you've got a big soup and a big mess. If it's vacated as of the date of the order vacating it, then everything that's happened before has happened before, and the company picks up at that point in time.

And so it's unclear to me, if the reason to vacate the receivership order is that the exchange act doesn't provide – this is a hypothetical again. I haven't studied everything on this point, and I'm not sure which way I'll go, and please understand that that is a true statement, I'm not sure which way I'll go. But if the idea is the exchange act doesn't do it, the receivership was grounded in claims that has since been withdrawn, therefore, the receivership order should be vacated, don't forget that the derivative claims were never found to be defective by the Court. They were voluntarily withdrawn as I see it.

So arguably there was a basis for the receivership at the beginning that may not still exist. You know, I'm sure Mr. Shi wants to argue that there was no basis at the beginning, and so the receivership order should be vacated effectively, you know, nunc pro tunc to the beginning or ab initio. And I'm sure that the receiver and Mr. Baliga would take the position that it shouldn't be vacated at all, but if it is vacated, it should just be because of changed circumstances, you know, like at the end of the case, the receiver gets discharged, it ends, but it's not necessarily turning back a clock.

So it seems to me there could be a major and

potentially disruptive difference in which way that would go if the Court were to determine that the receivership order should be vacated and the receiver should be discharged.

And because that was an order that was entered by Judge Marrero, I would not make the decision as to whether the order should be vacated. I would, on that one, I would do a recommendation, make a recommendation to Judge Marrero one way or the other, and it would ultimately be his call. It wouldn't be a matter of my ordering something you're appealing to Judge Marrero. It would be my making a recommendation, and anyone who doesn't like it file an objections with Judge Marrero before he decides whether to adopt or not adopt my recommendation.

So I haven't gotten to that one yet, and if anyone wants to supplement their prior briefing on this question I've just raised, I'll take supplemental papers, and you can discuss among yourselves any kind of schedule to submit those if there's anything further you want to say on that particular issue. Okay?

MR. MALONEY: Your Honor, this is Michael Maloney. You have, you know, obviously anticipated Mr. Shi's argument on that particular point. We do --

THE COURT: It's not hard to guess.

MR. MALONEY: It's not hard to guess, I understood. I guess my concern is that, it's timing, and you obviously are very aware of the timing issue here and, you know, the amount of time necessary to resolve these issues given the complexity of the case which, you know, we completely understand here. You know, basically my point is we have a current deadline to submit a reply in further support of the motion to discharge the receiver of August 2. I'd like to keep that date. I'd like to propose that we not delay a decision on the receiver, the motion to discharge the receiver one way or the other on the grounds of this issue of whether or not a possible discharge of the receiver is void ab initio or not.

THE COURT: I think you could manage to work it out while basically keeping on the same schedule you're on. I think you should be able to talk to each other about how you, if you want to supplement anything, how you do it and make it all end up at the same point or very close thereto. Okay? If it gets stretched out for a few days or something, I don't think that's really much of an issue.

I will say that I have some - I don't know the facts of the case in terms of what's really happened. I

don't know whether Mr. Shi was really looting the company or not. I don't know. There's been no finding of fact on the subject. The receiver has said certain things. But I can't find --

MR. SEIDEN: There's been, I'm sorry, there's been an arbitration, I'm sorry --

THE COURT: I --

(interposing)

THE COURT: I understand that, so maybe, you know, there's some force to that, but you don't even have collateral estoppel unless everybody's had a full and fair chance to litigate these issues. So I have my suspicions on the subject. I suspect that there may have been things that Mr. Shi did that were not in the company's best interests, but that's not a finding by me. And, you know, if the receivership is just, if the receivership order is vacated and the receiver is discharged, that might not represent the Court's buying into Mr. Shi's argument that the receiver has in any way harmed the company or Mr. Baliga has in any way harmed the company. The opposite may be true. But I'm going to look at the issues as matters of law and procedure based on how we got where we are and where we are.

You know, we have a plaintiff here who seemingly

has not done everything correctly, and it has turned into kind of a major mess. We also have Mr. Shi who has not done things correctly and has continued to make arguments on behalf of an entity from which he has been removed from authority under, you know, an order of the court. So we have everybody making arguments that they may not have standing to make. We have the most convoluted and complicated procedural case with more conflicts of interest that have arisen on behalf of everybody from every turn than I've ever seen. And I think there's responsibility on both sides perhaps for the fact that we have a major mess on our hands here.

And I'm just saying that you're going to have to live with whatever major mess you made and the legal consequences of that mess and the posture that we find ourselves in.

So that's just, I'm just trying to say that if I end up determining that the receivership be discharged, that might not ultimately be in the best interests of the company. Query whether that's what the Court's responsibility is or whether the Court's responsibility is to determine whether there's a sufficient basis to continue that order in place based on the claims that are currently in the case. And, you know, wherever the chips

fall it's where they fall on this. All right?

I'm going to --

MR. SEIDEN: Just one last - I'm sorry, just one last quick question in terms of DLA --

THE COURT: (indiscernible)

MR. SEIDEN: I'm sorry, Steven Seiden.

THE COURT: Okay.

MR. SEIDEN: DLA Piper, have they been notified about this? It occurs to me at least that, you know, we should know why they did what they did. I think they probably have a good reason why they did what they did. The receiver wasn't appointed yet at the DLA was in --

THE COURT: So I --

MR. SEIDEN: Yeah.

THE COURT: Someone raised the question of whether DLA would have to intervene with respect to the motion to toll the statute of limitations. It seems a little bit odd to me to ask the opinion of the potentially sued company as to whether they want to stretch out the time in which they may be sued. They're likely to say, no, why would we want that? But query what the case law says with respect to applications to toll a statute of limitations, whether such applications are typically and appropriately made ex parte, meaning with the side that

wants to toll the statute on a claim against somebody else and not involving the somebody else in that decision, whether courts have said let's get that somebody else involved in some way or other. In what way do courts get that somebody else involved? Has anybody looked at any law on applications to toll a statute? What are the grounds on which a court decides whether to toll a statute? What is the precedent with respect to tolling the statute?

Because I might find, okay, now I have an application that's duly made because it's made by the receiver who has standing to make it as opposed to by Mr. Shi whom I think probably does not, but now do I grant that application or not? What is the law under which I'm supposed to analyze that? What are the standards? What are the factors? What is the procedural posture? What am I supposed to be doing with that? Has anybody looked into that? Mr. Shi's motion was just basically, hey, this is common sense. You ought to do this. Right? Did you cite cases where courts have tolled statute of limitations and in what context? Was it anything remotely resembling this sort of situation? What do the courts do procedurally?

So I'm just telling you that I want to know whether the receiver wants to make the application so that

I have somebody whom I think has standing to make it. Whether that means I grant it or not is, again, another question. But at least you have somebody out of the starting gate who could bring it. If the receiver thinks it's an appropriate motion to make and the receiver wants to make it, then given the fact that there's a little time before that statute apparently would expire because I think Mr. Shi has said that the earliest or it could be as early as December and we're only still in the end of July, there might be time if the receiver thinks, oh, you know, I want to avoid personal liability just in case, I want to make that application, well, maybe then the receiver also wants to make it right in a proper and legally supported way and maybe the receiver wants to take a little bit more time to research and brief it on his own behalf, meaning a representative of the company, as representative of the company.

So that's something else also to consider because right now what I've got seems to be a little bit off the cuff.

MR. SEIDEN: And also, again, this is Steven Seiden again, Judge. Just in terms of DLA, again, when the receiver was appointed, we reached out to DLA for information, and they wouldn't, you know, they had

represented the company, so it was all privileged. You know, again, it just occurs to me that DLA, the reason, you know, we don't know the reasons they did what they did. Mr. Maloney --

THE COURT: You're welcome to investigate. I mean my --

(interposing)

THE COURT: My question that, the core question I was getting at was Mr. Shi brought a motion asking for tolling of statute of limitations. Mr. Shi said you have to listen to me because there's nobody else out there who will make this motion. I started wondering whether that was true because I don't think Mr. Shi was in a position to make it. Is it true that that he receiver would have no interest? If you asked, did the receiver think about it? Is the receiver potentially on the hook down the road if he doesn't make this application? Are we sure?

So I thought I would pose the question, does the receiver have an interest? This issue has been raised. If the receiver has no interest in raising it, so be it. And if I find Mr. Shi doesn't have standing to raise it, so be it. Then the whole question of whether the statute should be tolled or not goes out the window because nobody has standing to raise it who has bothered to raise it.

So, in other words, anybody who has standing did raise it, and the one who did would not have standing.

So if the receiver has interest since this has been raised, and I'm thinking about it, if the receiver has interest in raising it, the receiver should through counsel should research it and determine what the grounds are for such a motion, whether it should be doing some sort of diligence, whether it should be reaching out to DLA and asking for their explanation, whether it thinks it's a claim that really is viable or not, whether he wants to take his chances down the road that if he's discharged and a suit is brought against him, he's got a good defense and doesn't have to worry about it. He should look into it and make an application if he wants to that is an appropriate application.

And if you think that means DLA should get involved in some way based on precedent, then you tell me. If you think it meets the standard for tolling ex parte, then you tell me. If you think that he doesn't want to make the motion at all and wants to just let it die on the vine and he'll take his chances down the road even if the receivership order is vacated, so be it. Let me know because -

MR. SEIDEN: Yeah, I --

THE COURT: Okay? I'm not telling him what to do; I'm just asking questions.

MR. SEIDEN: Right. No, I think just, you know, I think the DLA had whatever bases they had to do what they did, and they did, you know, the assumption here is that they should've known that, you know, a derivative case can't be brought under Cayman law. But maybe there are other bases under which they were acting, and maybe they knew about the breaches of fiduciary duty because they were advising him not to breach the fiduciary duty. In fact, that's what the arbitration panel found.

So what I'm saying is I don't know - these are very complicated issues, and I don't know --

THE COURT: Sure, I --

MR. SEIDEN: -- resolution without them, without their input.

THE COURT: Well --

(interposing)

THE COURT: That's for you to decide what ought to be done and to tell me what you think the role of the Court should be.

MR. SEIDEN: Well, okay, on that note, I think part of it is going to be that those confidences, those privileges, those communications should be revealed to the

receiver so we can make an informed decision. We need to know that.

THE COURT: Well, I'm not going to --

MR. SEIDEN: We need to know what --

THE COURT: I'm not going to issue an order on this call without -

MR. SEIDEN: No, not on this call.

THE COURT: I'm not going to issue a ruling - I'm not going to issue a ruling on this call that attorney-client privilege is waived on a hypothetical malpractice claim where it's not even clear what communications would be put at issue because of the malpractice claims. I mean you're getting way ahead of where I am here. Okay, so if you research this and you look into this and you determine that you need to speak with DLA, you speak with DLA. Put your heads together with somebody from the firm and you figure out what ought to happen. If you think that you should not be speaking with DLA based on the research you've done, then you don't.

You figure out what you need to do. You figure out if you want to make an application, meaning the receiver wants to make an application to toll the statute, if he does, then make it in a proper way and tell me what

you think the Court ought to be doing and why and based on what authority. If you don't think it ought to be made and you're not inclined to make it, then you don't make it, and so be it, the receiver has not made it, the receiver's on notice that there is a potential claim. The receiver's on notice that the claim might be time-barred. The receiver takes his chances and maybe he's willing to do that because he thinks he's so solidly in the right that he's not really in any kind of jeopardy here, which is fine. This is his decision to make.

As far as the current motion brought by Mr. Shi, Mr. Shi is essentially asking me to determine that he can still speak for the company because the receivership order was void and because he should never have been stripped of the authority to speak for the company before. Query whether he could've done that without a board vote. Whatever.

Right now I don't think he has authority to speak for the company. I don't see how he possibly could at the current stage we're at with rulings in this court as they currently stand. So I don't think he has standing to bring the application. So I think that's going to have to be denied. But whether the receiver wants to do something is another question, and he might, and he might

not, and you're going to go look into it. And if there are privilege issues that you think I ought to address, you'll tell me and you'll give me support for it. If you think we ought to have a conference where DLA's on the phone, you give the support for it and you tell me that.

You know, if you think that there's no reason to do any of those things because you're satisfied from your research that the right thing for the receiver to do in the exercise of his fiduciary duty is not to seek tolling of the statute, then that's what you decide and you don't do it. Okay?

But the receiver's the one who can act for the company. The issue has been raised about whether the company might have a claim down the road that might end up time-barred. The receiver's alerted to it, the receiver should decide what to do about it and what relief if any to ask for and on what grounds. Okay?

MR. SEIDEN: Understood. Thank you.

THE COURT: All right? All right, we are adjourned, folks. Thank you all.

MR. MALONEY: Thank you.

MS. SOLI: Thank you.

THE COURT: Bye bye.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of *Wayne Baliga v. Link Motion Inc., et al.*, Docket #18cv11642, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: August 3, 2021